United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLEE

To be argued by
Jerome J. Niedermeier

Docket No. **76-1272** B P/S

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA

Appellee

v.

ROBERT P. GIALLANZO

Appellant

Appeal from the United States District
Court for the District of Vermont

BRIEF FOR THE UNITED STATES

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IN THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA

Appellee

v.

ROBERT P. GIALLANZO

Appellant

BRIEF FOR THE UNITED STATES

STATEMENT OF THE CASE

Robert P. Giallanzo appeals from a judgment of conviction entered on June 4, 1976, after a three day trial before Honorable James S. Holden, Chief United States District Judge, and a jury.

An indictment, bearing Criminal No. 7586 and filed December 11, 1975, charged Robert P. Giallanzo and co-defendant George W. Soriente in ten counts as follows:

Counts I-III charged transportation of three handguns from Vermont to New York and aiding and abetting said transportation in violation of 18 U.S.C. §§2 and 922(a)(3).

Counts IV-VI charged aiding and abetting the delivery of said handguns in violation of 18 U.S.C. §2 and 922(a)(5).

Counts VII-IX charged aiding and abetting the making of false statements concerning the acquisition of said handguns in violation of 18 U.S.C. §§2, 922(a)(6) and 924.

Count X charged a conspiracy to violate the aforementioned §§2, 922 and 924 of Title 18 in violation of 18 U.S.C. §371.

The trial of Robert A. Giallanzo* began on April 13, 1976 and on April 15, the jury returned a verdict of guilty on consolidated count I**. (Tr. 363)*** Giallanzo was found not guilty on the remaining counts.

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* On March 17, 1976, co-defendant Soriente entered a plea of guilty to counts I and IV of the indictment in the Eastern District of New York pursuant to a Rule 20 transfer agreement.

** Upon motion of the defendant, Judge Holden had consolidated counts I-III of the indictment into a single count (count I) and counts IV-VI of the indictment into a single count (count II). (Tr. 260-61) The remaining counts (VII-X) of the indictment were left unchanged.

*** Tr. refers to the transcript of the trial; other references are as follows: DB-Defendant's Brief; DA-Defendant's Appendix.

STATEMENT OF ISSUES

I WHETHER THERE WAS SUFFICIENT EVIDENCE TO SUPPORT THE VERDICT OF THE JURY.

II WHETHER THE VERDICT WAS INCONSISTENT AND, IF SO, WHETHER THIS IS A GROUND FOR REVERSAL.

STATEMENT OF FACTS

In the light most favorable to the Government, the jury could have found the following facts:

On September 20, 1975 defendant Robert P. Giallanzo and co-defendant George W. Soriente left New York City by car, (Tr. 239), and arrived in Brattleboro,* Vermont, later the same morning (Tr. 240-41). Soon after they arrived, Giallanzo and Soriente stopped Wayne Parker on a street corner in Brattleboro (Tr. 90). Giallanzo, who was a passenger in the car driven by Soriente (Tr. 91) asked Wayne Parker if there were any sporting goods stores in Brattleboro (Tr. 91, 113), and what the laws were concerning buying guns (Tr. 92). Giallanzo then told Wayne Parker that he (Giallanzo) wanted to buy some guns (Tr. 92) and offered to pay Parker two dollars to help in the purchase (Tr. 92).

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* In his Brief Giallanzo continually refers to Rutland, Vermont instead of Brattleboro (DB. 4, 5, 7). However, the record is clear, both from testimony of Government witnesses and from Giallanzo, that Brattleboro not Rutland was the city involved.

Giallanzo then went to see Clarence Parker, Wayne's brother (Tr. 95, 131). Giallanzo agreed to pay ten dollars each to Wayne and Clarence Parker to assist him in purchasing guns (Tr. 96, 131).

After looking at handguns in one store (Tr. 132), Giallanzo and Clarence Parker entered Clapps' store (Tr. 133). Giallanzo looked at a .22 Derringer magnum and told the store clerk that he would be back with the money (Tr. 133, 191). Giallanzo, Soriente and Clarence Parker soon returned to Clapps' store where Giallanzo tried out several handguns (Tr. 207-08). Giallanzo then paid for the .22 Derringer magnum (Tr. 210-11). Giallanzo also paid at least part of the purchase price for a .38 Colt pistol (Tr. 210-11). Clarence Parker signed the required Federal Firearms Form 4473 stating that he was the purchaser (Tr. 136-8, 208-10). Before leaving the store Giallanzo was told by the store clerk that the handguns could not be removed from the State of Vermont (Tr. 210).

Giallanzo carried the two handguns from the store (Tr. 138, 180). He then stopped and transferred the guns to Clarence Parker (Tr. 138, 189).

Giallanzo, Soriente and Clarence Parker then entered Galanes' Sporting Goods store where Giallanzo and Soriente selected a .38 revolver and Giallanzo paid for the gun, a shoulder holster and a box of shells (Tr. 139). Clarence

Parker carried all three guns from the store (Tr. 140).

Giallanzo and Soriente returned to their car. Once there, upon orders from Giallanzo, Clarence Parker placed the guns in the trunk of the car (Tr. 141, 188) bearing New York license plates (Tr. 90, 141). Giallanzo paid the Parker's ten dollars each (Tr. 103, 141) and then entered the car as a passenger (Tr. 102). Giallanzo told Clarence Parker that he might want to purchase more guns at a later date and gave Parker a telephone number in Queens, New York which proved to be false (Tr. 103, 142, 184-85). Giallanzo and Soriente then asked for directions to Interstate 91 and left (Tr. 103, 185).

Agent Reilly testified that on October 16, 1975 he recovered the .22 Derringer magnum from Soriente at his residence in Howard Beach, New York (Tr. 195, 205). Reilly also testified that on October 16, 1975, he interviewed Giallanzo at Howard Beach, New York (Tr. 198) where Giallanzo lived (Tr. 252). Giallanzo admitted knowing that the .22 Derringer magnum was in the car with him and Soriente when they left Brattleboro (Tr. 250-1), but denied knowing anything about the two .38's.*

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* The .38 Colt and .38 Smith and Wesson were not recovered.

ARGUMENT

POINT I THERE WAS SUFFICIENT EVIDENCE TO SUPPORT THE VERDICT OF THE JURY.

The defendant was found guilty by the jury of count I of the indictment as consolidated charging him with transporting and aiding and abetting in the transportation of the handguns from Vermont to New York in violation of 18 U.S.C §§2 and 922(a)(3). Defendant contends that the trial judge erred in refusing to grant a motion for acquittal based upon the alleged insufficiency of the evidence (DB. 14).

The standard in this Circuit for determining whether to permit a case to be decided by the jury was set forth in United States v. Taylor, 464 F.2d 240, 243 (2d Cir. 1972), quoting Curley v. United States, 160 F.2d 229, 232-233 (D.C. Cir. 1947), cert. denied, 331 U.S. 837 (1947):

> The true rule, therefore, is that a trial judge, in passing upon a motion for a directed verdict of acquittal, must determine whether upon the evidence, giving full play to the right of the jury to determine credibility, weigh the evidence, and draw justifiable inferences of fact, a reasonable mind might fairly conclude guilt beyond a reasonable doubt. If he concludes that upon the evidence there must be such a doubt in a reasonable mind, he must grant the motion; or, to state it another way, if there is no evidence upon which a reasonable mind might fairly conclude guilty beyond a reasonable doubt, the motion must be granted. If he concludes that either of the two results, a reasonable doubt or no reasonable doubt, is fairly possible, he must let the jury decide the matter.

The Court in Taylor clearly focused on the fact-finding function of the jury:

> . . .But if a reasonable mind might fairly have a reasonable doubt or might fairly not have one, the case is for the jury, and the decision is for the jurors to make.

Taylor at 243, quoting Curley at 932.

The jury is to consider all the evidence introduced, direct as well as circumstantial, United States v. Bowles, 428 F.2d 592, 597 (2d Cir. 1970), cert. denied, 400 U.S. 928 (1970), and all reasonable inferences therefrom. Taylor, supra, at 244-5. The same standard as this Court stated in Taylor, supra, applies where circumstantial evidence of guilt is presented:

> We in no way subscribe to the doctrine that "where the Government's evidence is circumstantial it must be such as to exclude every reasonable hypothesis other than that of guilt," which continues to be frequently urged by defense lawyers despite the Supreme Court's repudiation of it in Holland v. United States, 348 U.S. 121, 139-140, 75 S.Ct. 127, 137, 99 L.Ed. 150 (1954).
>
> As this Court stated in Bowles, supra:

> Circumstantial evidence is of no less probative value than testimonial evidence. . . The question is always whether the jury may rationally and logically infer the ultimate fact to be proved from basic facts, whether established by circumstantial or testimonial evidence and the surrounding circumstances of the case.
>
> 428 F.2d at 597.

The evidence, viewed in the light most favorable to the Government, Glasser v. United States, 315 U.S. 60, 80 (1942); United States v. Marrapese, 486 F.2d 918, 921 (2d Cir. 1973), cert. denied, 415 U.S. 994 (1974), was clearly "sufficient. . .from which the jury could properly find or infer, beyond a reasonable doubt, that the accused is guilty." United States v. Glasser, 443 F.2d 994, 1006 (2d Cir.), cert. denied, 404 U.S. 854 (1971), quoting, American Tobacco Co. v. United States, 328 U.S. 781, 787 (1946).

Wayne Parker testified that Robert Giallanzo approached him in Brattleboro, Vermont and asked him about purchasing guns (Tr. 92). Giallanzo then agreed to pay Wayne and his brother Clarence ten dollars to aid him in getting the guns (Tr. 96, 131).

Clarence Parker testified that Giallanzo saw the .22 Derringer magnum in the store and told the clerk he would return with the money (Tr. 133, 191). After the purchase, the defendant took possession of the .22 Derringer magnum for a short time before handing the gun to Clarence Parker (Tr. 138, 180, 188). Giallanzo told Clarence Parker

to put the .22 Derringer in the trunk of the car driven by co-defendant Soriente and in which Giallanzo was a passenger. After paying Clarence Parker and telling Parker to call him in Queens, New York, Giallanzo drove off in the New York registered car towards the Interstate (Tr. 103, 141-2, 185-6).

Steven Durborow testified that he was on duty as a clerk at Clapp's store when Giallanzo walked in. Giallanzo looked at some handguns (Tr. 208) and then Giallanzo purchased the .22 Derringer magnum (Tr. 210-11). Duborow then specifically told Giallanzo that the gun had to remain in the State of Vermont (Tr. 210).

Agent William Reilly testified that less than a month later he recovered the .22 Derringer from co-defendant Soriente at his residence in Howard Beach, Queens, New York (Tr. 195). He also interviewed Giallanzo on the same day at his residence in Howard Beach, Queens, New York (Tr. 197-8). Giallanzo admitted knowing about the purchase of the .22 Derringer (Tr. 203) and its presence in the car when Soriente and he left Brattleboro (Tr. 251-3).

The defendant's only point on appeal is that there was insufficient evidence for the jury to find him guilty of either actually transporting the .22 Derringer magnum or of aiding and abetting the transportation of the weapon (DB. 6).

However, in the light most favorable to the Government, the evidence shows that Giallanzo wanted to buy handguns, purchased the .22 Derringer, was told that the gun could not be taken from Vermont, ordered the gun put into the trunk of a car registered in New York, gave a New York address, left in that same car with his co-defendant, and knew the gun was in the car. The gun was found in the possession of his co-defendant a month later in New York where Giallanzo resided.

From this evidence the jury could reasonably infer that Giallanzo transported the gun to New York or aided and abetted said transportation.

The jury could reasonably infer that the .22 obtained by Giallanzo and Soriente in Vermont and found in the possession of Soriente in New York one month later was transported by them to New York and that Giallanzo aided and abetted such transportation by his actions. Much less evidence has been held insufficient to allow the inference of interstate transportation. McAbee v. United States, 434 F.2d 361 (9th Cir. 1970); Isaacs v. United States, 283 F.2d 587 (10th Cir. 1960); United States v. Williams, 254 F. Supp. 199 (D.Mo. 1966).

In McAbee the defendant was convicted of the interstate transportation of stolen firearms (18 U.S.C. 922(i)). The Court upheld his conviction and found that the jury could reasonably infer transportation of the guns from Nevada to California by McAbee and his co-defendant from the evidence that the guns were taken by them in one state and recovered from McAbee in another state. The Court stated:

> From the fact that the possessor is the thief, the conclusion follows inescapably that he knew the goods were stolen and participated in their transportation from the site of the theft.

McAbee at 363.

In Isaacs the defendant was charged with a violation of 15 U.S.C. §902(c),* interstate transportation of a firearm by a convicted felon. The independent evidence in Isaacs showed that the gun and Isaacs were in Kentucky in August 1958 and the gun was recovered from Isaacs in Oklahoma in June 1959. In affirming his conviction the Court indicated that "[O]bviously the gun was transported in interstate commerce and Isaacs traveled in interstate commerce from

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* This chapter of the United States Code has since been repealed and made a part of 18 U.S.C. 922 et seq. under which Giallanzo was found guilty.

Kentucky to Oklahoma." Isaacs at 589. Such evidence was sufficient to permit the inference that Isaacs transported the gun from Kentucky to Oklahoma. In Williams the defendant was charged with a violation of 15 U.S.C. 902(e). The facts showed that the defendant purchased a gun in Nevada and the gun was found in his car in Montana. The defendant admitted the gun was in his possession during the interval. Williams at 202. This evidence of transportation was sufficient to sustain the defendant's conviction. In the instant case, the fact that the same gun purchased by Giallanzo in Vermont, put into Soriente's car by Giallanzo's order and found in Soriente's possession in New York a month later coupled with Soriente's admission that it was the same gun is clearly sufficient for the jury to find that Giallanzo actually transported or aided and abetted the interstate transportation.

This Court has held in a similar situation that a reasonable inference of transportation may be made from a theft in one state and possession in another state. United States v. Coppola, 424 F.2d 991 (2d Cir. 1970), cert. denied 339 U.S. 928 (1970). Coppola was found in possession in Connecticut of bonds taken from New York. From the mere fact that the bonds were found in Connecticut in Coppola's possession and stolen in New York, this Court held that the jury could infer that Coppola transported the bonds from New

York to Connecticut. Coppola at 993. Certainly, in the instant case, the jury could infer that Soriente transported the .22 to New York from Vermont and that Giallanzo, who was involved in the purchase of the gun and ordered it put into Soriente's car trunk, aided and abetted that transportation.

Defendant's reliance on United States v. Wing, 302 F.Supp. 1247 (D.Mo. 1969) is misplaced. In Wing, the defendant was not charged as an aider and abettor of the transportation and, in fact the only evidence introduced at trial concerning Wing's involvement in the transportation was mere knowledge that the gun was in the car in Oklahoma. Wing at 1249. However, in the case at bar Giallanzo purchased the gun, ordered it placed in a car in which he was riding and left Vermont with his co-defendant in whose actual possession the gun was found one month later. Such actions of Giallanzo go beyond mere knowledge that a gun has been transported and certainly permit the jury to draw the reasonable inference that Soriente took the gun from Vermont to New York and Giallanzo assisted him by ordering the gun to be placed in the joint possession of Soriente and himself.

Giallanzo also contends that the jury instructions given by the trial judge on aiding and abetting were insufficient to allow the jury to find the defendant guilty on that theory. However, such is not the case. Judge Holden instructed the jury on count I in pertinent part:

> And this first count, as consolidated, charges that on or about September 20, 1975, ROBERT P. GIALLANZO and GEORGE W. SORIENTE, unlawfully, wilfully and knowingly, did transport certain fire arms listed in the count, into the State of New York, where each resided, from the District of Vermont, where the fire arms were purchased. And otherwise obtained by ROBERT GIALLANZO and GEORGE W. SORIENTE, in violation of Title 18 of the United States Code, Sections 2 and Sections 922 A 3.

Although not specifically defining the language of 18 U.S.C. §2, the trial judge clearly stated that count I charged the defendant with a violation of that section. Later in his instructions on another count the trial judge instructed the jury:

> I will explain to you more fully the provisions of the statute which relates to aiding and abetting but the section of the Title 18 of the United States Code referred to as Section 2, provides that whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, may be regarded and punished as a principle (sic) and whoever wilfully causes an act to be done which directly is performed by him or another, would be an offense against the United States, is punishable as a principle (sic). And by that I refer to the words, "aid and abet."
>
> So it is that any person who commits an act in violation of a criminal statutes, commits a crime. It is also a crime to aid or abet or induce another person to commit such an act.
>
> This offense is based on the legal principle that any one who aids, abets or induces another to commit an illegal act is himself, guilty of committing the illegal act.

. . .That he participated in it as in something he wished to bring about or, in other words, that he sought by his action to make it succeed. That he had some stake in the success. Thus, in order to find the defendant guilty of aiding and abetting, you must of course, find something more than mere knowledge on his part, that a crime was being committed, for a mere spectator at a crime or to a criminal offense, is not a participant. But in order to convict it is not necessary that you find the defendant, himself, did all of the acts.

If the defendant caused an act to be done, which if directly performed by him would be an offense against the United States. The crime can be considered as if the defendant, himself, had done the act.

Thus, participation by the defendant may be shown by any act which you find was committed by the defendant which involved his participation in the crime and it is sufficient that the Government establish beyond a reasonable doubt that the defendant showed by what he said or did, that he sought to accomplish the success of the crime.

Tr. 338-339.

Then, upon the request of defense counsel, the trial judge re-instructed the jury specifically on count I immediately before allowing them to retire to consider their verdict:

> Members of the Jury, it has come to my attention that as to the consolidated counts, first consolidated count of the indictment, that I have referred to each of the weapons that were specified. If you find beyond a reasonable doubt that the Government has established the fact that the defendant transported the fire arms that were described to you, any one of the fire arms described to you, on or about September 20, 1972, at a time when the Defendant was a resident of New York State and that they are transported, any one or more of those weapons were transported from Vermont to New York, then that would be sufficient, provided, of course, that you find that the defendant acted knowingly and wilfully.

> Also, in that connection, the mere fact that the defendant knew a gun was being transported in the vehicle in which he was a passenger, will not in and of itself, establish him to be guilty of the first consolidated count.
>
> In other words, you must find something more than mere knowledge on his part that the crime of illegal transportation was being committed, for a mere spectator at a crime is not a participant. You must find that the defendant was an actual participant and that he did so, knowingly and wilfully, in the transportation of the weapons in question. One or more of the weapons in question. . . .

Tr. 357-358.

Such instructions considered as a whole, United States v. Nadler, 353 F.2d 570, 573 (2d Cir. 1965), were clearly sufficient to permit the jury to find the defendant guilty on count I as an aider and abettor.

Considered in the light most favorable to the Government, the evidence was sufficient for the jury to infer that the gun was transported to New York from Vermont by co-defendant Soriente and that by purchasing the gun and ordering the gun put into Soriente's car the defendant aided and abetted such transportation. The jury could certainly find "more than mere knowledge" (Tr. 358) and conclude that the defendant was "an 'actual participant" (Tr. 358) in the illegal transportation.

POINT II THE VERDICT OF THE JURY WAS NOT INCONSISTENT AND, IN ANY EVENT, INCONSISTENT VERDICTS ARE NOT GROUNDS FOR REVERSAL.

Defendant also argues that since the defendant was found not guilty on the conspiracy count (count X), the jury could not consistently find him guilty of the substantive count of abetting the transportation of the .22 Derringer (count I) which was included as an object of the conspiracy charged in count X. Defendant relies on the holding in Pinkerton v. United States, 328 U.S. 640 (1946) to support his theory. However, such support is lacking.

The Court in Pinkerton held that a defendant found guilty of conspiracy could also be found guilty as an aider and abettor of a substantive crime stated as an overt act of the conspiracy if the substantive crime was committed by a co-conspirator, even if the defendant had not been a participant in the substantive crime, provided that the crime was in furtherance of the conspiracy. Pinkerton at 646-8. Defendant now wants to reverse this holding so that acquittal of the conspiracy demands acquittal as an aider and abettor of the substantive charge.

In Pinkerton even though there was no evidence to show that one defendant had participated at all in any of the substantive crimes included as overt acts,* the Court

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* This is another flaw in Giallanzo's argument since the overt acts included in count X do not mention any acts relating to the transportation of the .22 Derringer from Vermont to New York. DA-12.

sustained the guilty verdict on the theory of liability for acts of a co-conspirator. The Court did not hold that acquittal on the conspiracy amounted to acquittal on the substantive count. In fact, the Court recognized that the commission of the substantive offense and a conspiracy to commit it are separate and distinct offenses. Pinkerton at 643.

In the other two cases cited by appellant, United States v. Alsondo, 486 F.2d 1339 (2d Cir. 1973) and United States v. Dickerson, 508 F.2d 1219 (2d Cir. 1975), this Court rejected a jury charge that permitted a defendant to be convicted of a substantive offense solely because of his part in the conspiracy. These decisions do not support Giallanzo's position since there is ample evidence that he actually participated in the substantive crime and the jury was instructed on the requirement of participation.

The Supreme Court has clearly distinguished aiding and abetting and conspiracy:

> Aiding, abetting, and counseling are not terms which presuppose the existence of an agreement.
>
> These terms have a broader application, making the defendant a principal when he consciously shares in a criminal act, regardless of the existence of a conspiracy.

Pereira v. United States, 347 U.S. 1, 1112.

The same argument proposed by the defendant here was rejected by the First Circuit in Ottomano v. United States, 468 F.2d 269 (1st Cir. 1972) and United States v. Principe, 482 F.2d 60 (1st Cir. 1973).

Ottomano was tried on two counts of an indictment charging (1) conspiracy to sell cocaine and (2) a substantive sale of cocaine was also charged as an overt act of the conspiracy.* The trial judge granted Ottomano's motion for judgment of acquittal on the conspiracy count but denied it on the substantive count. After the jury returned a verdict of guilty on the substantive count for aiding and abetting the sale, Ottomano argued that he could not be convicted on such a theory when he had been acquitted of the conspiracy. Stating that conspiracy and aiding and abetting are separate offenses, the Court affirmed the conviction and found there was no essential element common to the two counts since Ottomano could have aided and abetted the sale without entering into a prior agreement to do so. Ottomano at 2712.

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* The Government would again note that no overt acts of the conspiracy count charged Giallanzo with transportation of the weapon. Hence, there is even less of an identity between the two counts than in either Ottomano or Principe.

Also, in United States v. Principe, supra, the defendant claimed that the same jury that acquitted him on conspiracy could not consistently convict him of a substantive crime alleged as an overt act in the conspiracy. The Court found the verdict consistent:

> . . .the jury could with perfect logic, have concluded (1) that appellant aided and abetted the sale. . .and (3) that the Government had nevertheless failed to establish his membership in the continuing conspiracy alleged in the indictment.

Principe at 63.

In the instant case the jury could have found that Giallanzo did not actually form a prior agreement with co-defendant Soriente to transport the .22 Derringer, but that he aided and abetted Soriente in the actual transportation of that weapon by telling Clarence Parker to put the gun in the car trunk. The verdict of the jury was certainly consistent with the facts presented.*

Even if, arguendo, the verdict lacked consistency, that is not sufficient grounds for reversal. Dunn v. United States, 284 U.S. 390, 393 (1931), United States v. Zane, 495 F.2d 683 (2d Cir. 1974), cert. denied, 419 U.S. 895 (1974). As long as there is sufficient evidence to support the jury's verdict,

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* No confusion by the jurors was apparent as evidenced by their affirmation of the verdict when polled.

consistency in the verdict is not required. Dunn, supra, at 393. The jury has the prerogative to exercise its "historic power of lenity" which under the evidence may account for an inconsistent verdict. United States v. Carbone, 378 F.2d 420, 422-3 (2d Cir. 1967); see also, United States v. Reicin, 497 F.2d 563 (7th Cir. 1974) (acquitted on 10 of 11 counts of mail fraud based on lenity toward defendant). The verdict may also be the result of compromise. United States v. Harary, 457 F.2d 471 (2d Cir. 1972).

Since the evidence is clearly sufficient to sustain the jury verdict of guilty on Count I, the verdict is proper.

CONCLUSION

The judgment of the District Court should be affirmed.

Respectfully submitted,

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Assistant U.S. Attorneys

September 10, 1976

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF VERMONT

UNITED STATES OF AMERICA	)	
	)	
v.	)	Criminal No. 76-1272
	)	
ROBERT P. GIALLANZO	)	

CERTIFICATE OF SERVICE

I hereby certify that I have this 15th day of September, 1976, mailed a copy of the attached Brief to Stephen G. Murphy, Esq., counsel for Appellant, postage prepaid, at 125-10 Queens Boulevard, Kew Gardens, New York 11415.

Jill A. Jacobson

JILL A. JACOBSON
Assistant U.S. Attorney